

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WILLIAMS & COMPANY COMMUNICATIONS, INC.	DOCKET NOS. TCU-01-11 WRU-01-22-3547 TF-01-158
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**ORDER DOCKETING APPLICATION, EXTENDING DETERMINATION DATE, AND
ESTABLISHING PROCEDURAL SCHEDULE**

(Issued July 23, 2001)

On May 11, 2001, Williams & Company Communications, Inc. (Williams), filed an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29, to provide local exchange services throughout Iowa. The application has been identified as Docket No. TCU-01-11.

Williams states that it intends to offer local exchange service in the service territory of Qwest Corporation (Qwest), Citizens Communications Company (Citizens), Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), and Frontier Communications of Iowa, Inc. (Frontier). Williams states that it requests the authority to provide local exchange service and high speed internet access service using a combination of its own facilities, leased facilities, and the resale of facilities. Williams states that it currently provides internet service to 6,200 customers throughout Iowa and does not initially plan to offer switched basic telephone service.

In the application, Williams requested the waiver of Board rules 199 IAC 16.5(2) and 22.3(1). The waiver request was identified as Docket

No. WRU-01-22-3547. On May 31, 2001, Williams filed a proposed tariff that contained the terms, conditions, and rates for providing local exchange service. The proposed tariff was identified as TF-01-158.

Williams has indicated that it does not propose to offer switched local exchange service initially and will only be providing data service to its internet customers. This method of operation has raised concerns with the Utilities Board (Board) in another docket where a putative competitive local exchange carrier (CLEC) was conducting business in a similar manner. The Board in Docket No. FCU-00-4 expressed concern that, based on the facts presented, a mutual exchange of traffic might be lacking between the CLEC and the incumbent local exchange carrier (ILEC). The Board cited 47 C.F.R. § 51.100(b) to support the concern. The federal rule states:

A telecommunication carrier that has interconnected or gained access under sections 251"a"(1), 251"c"(2), or 251"c"(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well. (Emphasis added).

The Board indicated further that the CLEC may not be acting as a bona fide CLEC and that the CLEC was subject to revocation of its certificate, pursuant to Iowa Code § 476.29(9) (2001). In the order the Board indicated:

The Board does not want to restrict competition by dictating how a new CLEC should solicit customers or by requiring that it not sign an ISP as its first customer. Equally, the Board is very troubled by the possibility that a company might become a certificated local exchange company for the sole purpose of obtaining uncompensated or

undercompensated interconnection to the incumbent's telecommunications network at the expense of other telecommunications companies or end-user customers. It is questionable that LTDS can, over time, be viewed as a CLEC if it continues to have only LISCO for a customer. The interconnection required under the federal act is intended to promote local exchange competition and is for the direct benefit of CLECs, not ISPs. LTDS must show by its future actions that it is a bona fide CLEC by aggressively marketing competitively priced services throughout its service territory. It must win customers if it is to continue to receive the benefits, such as those ordered today, which are accorded a CLEC. If LTDS fails to do this, the Board will entertain a complaint pursuant to Iowa Code §§ 476.29(5) and (9) aimed at revoking the CLEC certificate granted by the Board to LTDS.¹

The Board on June 5, 2001, issued an order in Docket No. TCU-01-13 directing the CLEC to respond to concerns raised by its business operations and establishing a procedural schedule for interested parties to file responses. The Board stated that a failure by the CLEC to show that it is a bona fide CLEC would result in revocation of its certificate.

Based upon the information filed by Williams, the Board believes that Williams' proposed business operations are sufficiently similar to those of the CLEC in Docket No. TCU-01-13 that the Board should docket Williams' application for further review. The Board is concerned that Williams may not meet the statutory requirements for receiving a certificate, since it will not be offering switched local exchange service. Additionally, the Board is concerned that once Williams is granted

¹ "Order Requiring Interconnection Pursuant to Interconnection Agreement," *In Re: LTDS Corporation v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, Docket No. FCU-00-4, issued December 22, 2000, at page 5.

a certificate ILEC's will be obligated to provide interconnection with Williams with only noncompensatory charges, and Williams would be eligible to obtain NXX's from the North American Numbering Plan Administrator. If Williams were to obtain blocks of NXXs without customers, it would contribute to the problem of number exhaustion that has caused the recent splitting of area codes in Iowa.

The Board will allow Williams to provide additional information concerning its proposed business operations and will establish a procedural schedule to allow for interventions and responses to the Williams information. Additionally, the Board will extend the date for making a determination on Williams' application for an additional 60 days to October 8, 2001, as allowed by Iowa Code § 476.29 (2001).

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity for providing local telecommunications services filed by Williams & Company Communications, Inc., on May 11, 2001, is docketed for further review.

2. The following procedural schedule is established:

a. On or before August 2, 2001, Williams & Company Communications, Inc., is ordered to file prepared direct testimony with supporting exhibits and work papers to establish that it proposes to operate as a bona fide CLEC.

b. Any person desiring to intervene in this docket shall file a petition to intervene on or before August 3, 2001. Late-filed petitions to intervene must show good cause for failure to meet the deadline.

c. The Consumer Advocate Division of the Department of Justice and any intervenors shall file prepared direct and responsive testimony, with supporting exhibits and work papers, on or before August 13, 2001.

d. Williams & Company Communications, Inc., shall file any prepared rebuttal testimony, with supporting exhibits and work papers, on or before August 20, 2001.

e. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on September 11, 2001, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

f. Any party desiring to file a brief may do so on or before September 18, 2001.

3. In the absence of objection, all work papers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing.

6. Pursuant to 199 IAC 7.7(11), the deadline for filing responses to motions will be no later than five days from the date the motion is filed. All motions should be served on all other parties, and on all persons who have filed a petition to intervene that has not yet been ruled upon, by facsimile transfer or by electronic mail as well as by United States mail, on or before the date of filing.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper

Acting Executive Secretary

Dated at Des Moines, Iowa, this 23rd day of July, 2001.